

secondary schools” across LATA boundaries.¹⁰⁴ The Commission also tentatively concludes that modification of LATA boundaries “for the purpose of facilitating high-speed access to the Internet” in rural areas “would further Congress’ goal of ensuring that advanced services are deployed to all Americans.”¹⁰⁵ While the Commission is likely correct in its determination that “facilitating high-speed access to the Internet” is consistent with Congress’ express goals as set forth in section 706,¹⁰⁶ its conclusion that modifying LATA boundaries is an appropriate method of achieving those aims, at this point in the evolution of a robust but still nascent market, effectively puts the cart before the horse. Congress considered and expressly provided for limited interLATA exceptions to accommodate the provision of advanced telecommunications services by the BOCs.¹⁰⁷ For the Commission to expand the terms of these limited exceptions, by taking up *ad hoc* LATA “modification” requests, particularly so early in the development of the advanced telecommunications services market, would effectively override the express limitations of section 271.¹⁰⁸ The Commission is obligated to allow market forces to drive the deployment

(footnote continued from previous page)

¹⁰³ NPRM at ¶192.

¹⁰⁴ 47 U.S.C. § 271(g)(2).

¹⁰⁵ NPRM at ¶194 (footnote omitted).

¹⁰⁶ 47 U.S.C. § 157 note (1996).

¹⁰⁷ 47 U.S.C. § 271(b)(3) and (g) (1996).

¹⁰⁸ 47 U.S.C. § 271(a) (1996). See also *MCI v. AT&T*, 512 U.S. at 225 (1994) (the term “modify” means to change moderately or in a minor fashion, not to rewrite the statutory plan).

of advanced telecommunications capability to all Americans; otherwise, the robust competitive marketplace contemplated by the Act will not be realized.

Moreover, Transwire notes that the LATA modifications permitted to date are qualitatively different than the proposals presently before the Commission, particularly that for BOC interLATA service to NAPs. In both the *LATA Association*¹⁰⁹ and the *Expanded Local Calling Area*¹¹⁰ cases, the Commission's LATA modifications were aimed at improving local exchange service or meeting changes in state determinations of appropriate local calling areas and were consistent with the federal court decisions on LATA boundary waivers. Those modifications were not to compensate for some perceived limitations of the interLATA service industry. The interLATA-NAP proposal, however, is qualitatively different because it would afford the BOCs a method of entering the traditional market sphere of interLATA providers and of circumventing the stringent requirements of section 271.

Transwire also concludes that the InterLATA NAP proposal is highly unlikely to accomplish the goal of securing high-speed Internet-based services for end-users. The provision of Internet backbone services is a competitive business today. The entry of the BOCs into this market, with their monopoly control to the end-user, poses an enormous threat to competition. If, consistent with Congress' express desire, the Commission is committed to let market competition reign in the advanced telecommunications services market, then it must resist the

¹⁰⁹ See *Guadeloupe Valley Telephone Cooperative Request for LATA Relief*, Memorandum Opinion and Order, 13 FCC Rcd 4560, 4563-64 (CCB 1998).

temptation to intervene based on BOC claims that somehow the competitive market has gone askew.¹¹¹

In addition, requests to provide raw bandwidth using BOC interLATA lines reflect a misunderstanding of the common causes of less-than-expected application performance on the Internet. Since effective data transmission over the Internet depends on low packet loss rather than line capability, such issues will not be resolved through additional lines for raw bandwidth; rather, the causes of Internet congestion are more related to protocol dynamics. Internet performance problems are best addressed through Internet-specific engineering strategies that are not always emphasized or well-understood in the telephone community. For these reasons, BOC-provided solutions are unlikely to actually serve the underlying goal of "facilitating high-speed access."¹¹² As is most often the case in young markets, the best solution is more likely found among those who make the provision of advanced telecommunications capability their primary focus, not a secondary or tertiary one.

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¹¹⁰ See *Petitions for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service*; Memorandum Opinion and Order, File No. NSD-LM-97-2, ¶¶14-17 (released July 15, 1998).

¹¹¹ Bell Atlantic-West Virginia's recent request for LATA modification also raises the possibility that the Commission's LATA modification process can be subject to manipulation. The record of that proceeding shows that Bell Atlantic was not interested in contacting other providers of interLATA lines that were, in fact, ready and able to provide the services. Rather, it underscores the BOC's desire to vertically integrate interLATA services with local access, by inventing a "backbone crisis." *Emergency Petition of Bell Atlantic—West Virginia for Authorization to End West Virginia's Bandwidth Crisis*, Emergency Request for Interim Relief, CC Docket No. 98-11 (filed July 22, 1998).

¹¹² NPRM at ¶194.

Accordingly, the Commission should heed the command of Congress and stand fast against *ad hoc* modifications to LATA boundaries. Let the invisible hand of market economics work its magic¹¹³ and shape the advanced telecommunications services market. As demand requires, competition will drive entry into the interLATA services market, and Congress' dual dream of the deployment of advanced telecommunications capability to all Americans in a robust competitive market unencumbered by regulation will be realized.

¹¹³ The Commission would be wise to abide Adam Smith's teaching that individual market decisions operate in the collective interest of market players as if guided by an "invisible hand." A. Smith, *The Wealth of Nations passim* (1776).

CONCLUSION

The deployment of advanced telecommunications capability to all Americans, as is the Commission's charge, is contingent on the ability of competitive and innovative providers of advanced telecommunications services to enter the market unburdened by unnecessary regulation and assured of ready access to those elements of the existing telecommunications infrastructure integral to the provision of advanced services. Accordingly, the Commission must in this rulemaking undertake only those actions that encourage robust competition and technological advancement. The Commission must tame the advantages of the monopolies that have defined the telecommunications industry throughout the majority of this century and nurture the next generation of competing providers to ensure that all Americans realize to the fullest extent possible the wonders of the telecommunications revolution already underway.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Comments of Transwire Communications, Inc. was sent via hand-delivery to the individuals on the attached service list, this 25th day of September, 1998.



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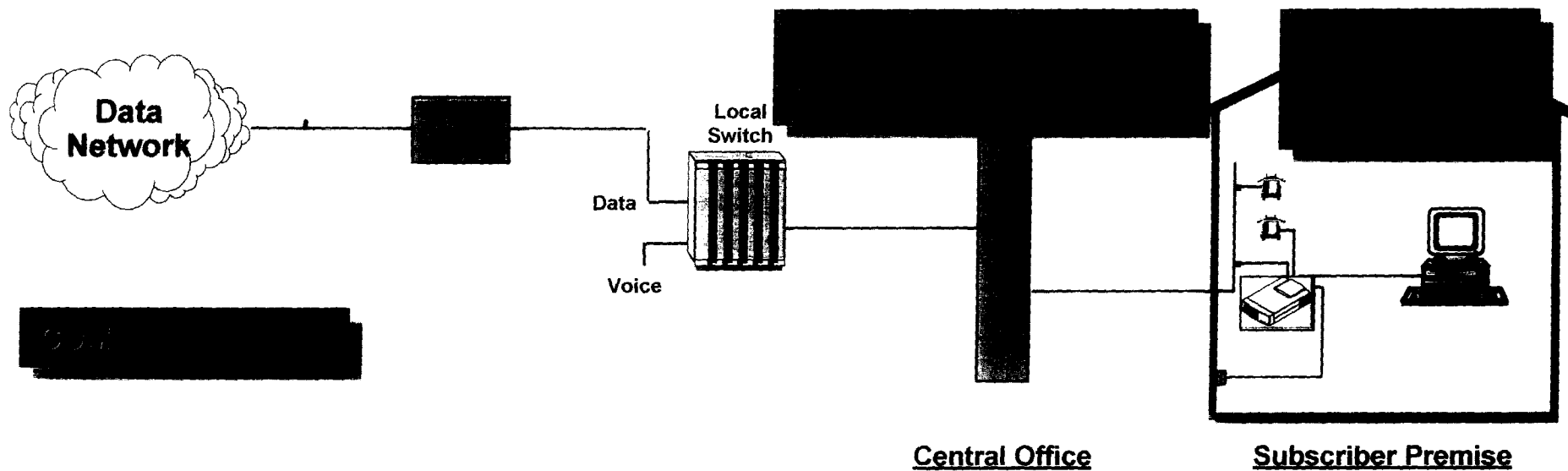
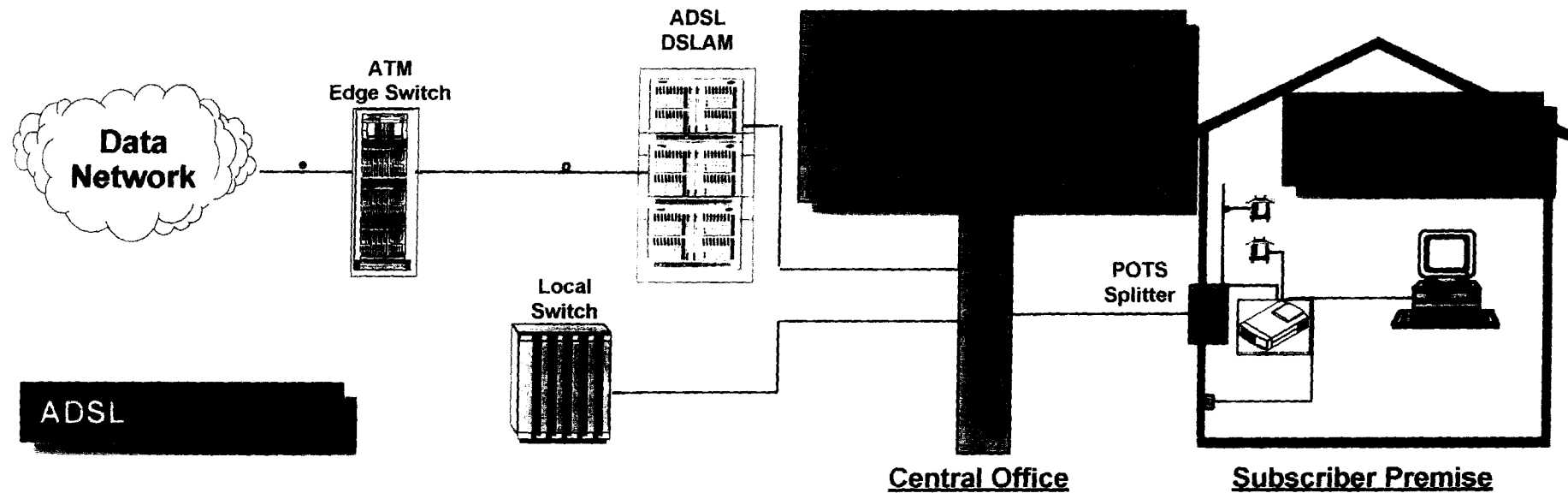
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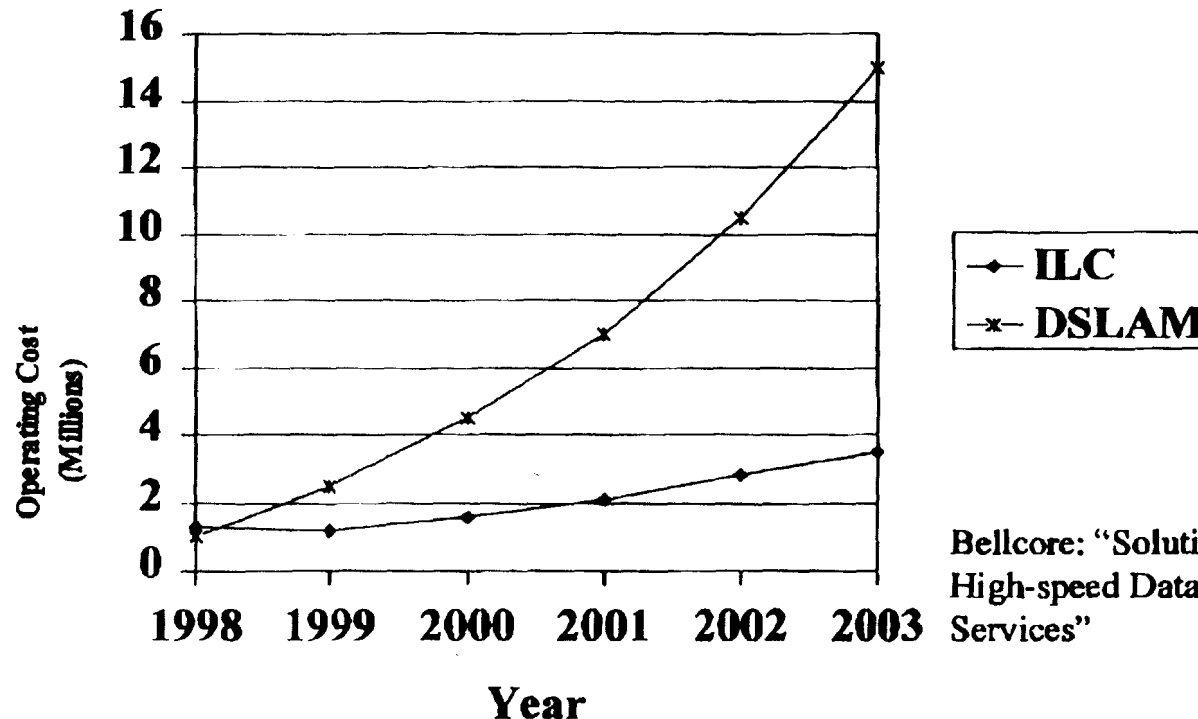


ADSL Provisioning Options

Integrated Line Card vs. Digital Subscriber Line Access Multiplexer



Using anticipated growth and churn rates, Bellcore estimated provisioning requirements for copper plant, DSLAM and transport facilities and identified a 60% annual operations cost savings for an integrated line card approach - like the Nortel 1MM - versus a DSLAM deployment model.



Bellcore: "Solutions for Ubiquitous High-speed Data Network Access Services"